

REMARKS/ARGUMENTS

Applicant would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action and amended as necessary to more clearly and particularly describe the subject matter which applicant regards as the invention.

Applicant would like to thank the Examiner for having a telephonic interview with applicant's attorney, Brad Spencer, on August 15, 2006. During the interview, proposed amendments to claim 1 were discussed. Also discussed were Moro et al. (U.S. patent number 5,045,266) and Stanton (U.S. patent number 5,185,802). Applicant's attorney argued that the proposed amendments distinguished claim 1 over Moro in view of Stanton. Although no agreement was reached, the Examiner indicated that the proposed amendments appeared to distinguish claim 1 over Moro in view of Stanton. The current amendments to claim 1 are substantially the same as those discussed during the interview.

Claims 1, 3, 20, 21, 23 and 25-28 have been amended.

Claims 1, 3, 4, 17-20, 23, 24, 27 and 28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Moro et al. (U.S. patent number 5,045,266) in view of Stanton (5,185,802). Claim 1 recites in part, "an apparatus for applying a substance to a human body during predetermined time intervals, comprising...two outer shells...the substance being provided at an outer surface of one of said shells, wherein the other one of said shells lacks the substance." Neither Moro nor Stanton, separately or combined, teach or suggest a hearing device having two shells, a substance being provided at an outer surface of one of said shells, wherein the other one of said shells lacks the substance. Moro teaches a permanent earmold (2:33-35) for releasing

medicinally active substances (3:16-18). Moro's permanent earmold does not teach or suggest two outer shells, one having a substance to be applied to the human body and one lacking the substance. Stanton teaches a removable shell (1:26-30). However, Stanton does not teach a shell having a substance to be applied to a human body. Therefore, Stanton does not teach or suggest two outer shells, one having a substance to be applied to the human body and one lacking the substance. Because Moro in view of Stanton fails to teach or suggest all of the limitations of claim 1, claim 1 is allowable over the combination of references.

Claim 1 requires an apparatus for applying a substance to a human body during *predetermined* time intervals. The recited predetermined time intervals require intervals of time that are *determined* in advance, during which the substance is applied. Moro merely teaches the controlled release of medicinally active substances (3:16-18). Moro does not teach or suggest intervals of time *determined* in advance for releasing medicinally active substances. Moro teaches a permanent earmold (2:33-35). Moro's release of medicinally active substances occurs so long as the permanent earmold is worn. Moro's permanent earmold for releasing medicinally active substances does not teach or suggest applying a substance during *predetermined* time intervals. Stanton also fails to teach or suggest the noted limitations. Therefore, claim 1 is allowable over Moro in view of Stanton.

A benefit of the claimed invention, which was appreciated by the applicant but not recognized by the prior art of record, is that a substance can be applied during predetermined time intervals by providing two shells, one having the substance and one lacking the substance. At the end of a time interval, when the substance is no longer needed, the shell having the substance is replaced with the one lacking the substance. The substance is only applied during the

predetermined time intervals in which a shell having the substance is used. Neither Moro nor Stanton, nor any of the other prior art of record recognizes this benefit, which is realized by the present invention as claimed. Moreover, no other benefit or motivation is disclosed anywhere in the prior art of record that would have led one of ordinary skill in the art to modify the teachings of Moro in view of Stanton to arrive at the invention of claim 1.

Claim 20 recites, "a method of applying a substance to a human body during predetermined time intervals, comprising the steps of...providing...two outer shells...one of said shells having the substance on an outer surface thereof, wherein the other one of said shells lacks the substance." For the reasons discussed above with respect to claim 1, Moro in view Stanton fails to teach or suggest the noted limitations of claim 20. Accordingly, claim 20 is allowable over the cited combination of references.

Claims 3, 4 and 17-19 depend from claim 1 and, therefore, are also allowable over Moro in view of Stanton. Claims 23, 24, 27 and 28 depend from claim 20 and, therefore, are also allowable over Moro in view of Stanton.

Claims 5-16, 21, 25 and 26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Moro and Stanton and further in view of Zaffaroni. Claims 5-16 depend from claim 1 and are allowable over the cited combination of references for at least the reasons discussed above with respect to claim 1. Claims 21, 25 and 26 depend from claim 20 and are allowable over the cited combination of references for at least the reasons discussed above with respect to claim 20. Furthermore, applicant submits that there is insufficient motivation to modify the teachings of Moro and Stanton based on the teachings of Zaffaroni to arrive at the present invention. There is nothing in the prior art of record that indicates that one of ordinary skill in the art, at the time

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the invention was made, would have been motivated to incorporate aspects of a *medical bandage* apparatus into a *hydrophilic composite earmold* as taught by Moro or a *modular hearing aid* as taught by Stanton. In this case, the Examiner is impermissibly using hindsight in combining Zaffaroni with the Moro and Stanton references. Therefore, a *prima facie* case of obviousness sufficient to support a rejection under 35 U.S.C. 103(a) has not been made, and thus the rejections should be withdrawn.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 32784US5.

Respectfully submitted,

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